

AMENDED IN ASSEMBLY JANUARY 4, 2006

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 759

Introduced by Assembly Member Lieber

February 18, 2005

~~An act to add Section 76000.6 to the Government Code, relating to county penalties. An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, relating to unfair competition.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 759, as amended, Lieber. ~~Crime Stoppers Program. Unfair competition: actions by county counsels.~~

Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a county counsel, by agreement with the district attorney, may bring an unfair competition action involving violations of a county ordinance.

This bill would delete the limitations on unfair competition actions brought by a county counsel, allowing the county counsel to proceed without an agreement with the district attorney and to bring actions that do not involve violations of a county ordinance.

~~Existing law establishes an additional penalty to be assessed by each county on fines, penalties, and forfeitures imposed for criminal offenses and parking penalties, to be used for local courthouse construction, criminal justice facilities construction, automatic fingerprint identification funding, forensic laboratory funding, emergency medical services funding, and DNA identification funding, as specified for each county.~~

~~This bill would provide that a county board of supervisors in a county that has established a local Crime Stoppers Program may elect to levy an additional penalty not to exceed \$2, upon fines, penalties, and forfeitures collected for misdemeanor criminal offenses to be used to fund that county's local Crime Stoppers Program.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 17204 of the Business and Professions*
2 *Code is amended to read:*

3 17204. Actions for Injunctions by Attorney General, District
4 Attorney, County Counsel, and City Attorneys

5 Actions for any relief pursuant to this chapter shall be
6 prosecuted exclusively in a court of competent jurisdiction by the
7 Attorney General or any district attorney or ~~by any county~~
8 ~~counsel authorized by agreement with the district attorney in~~
9 ~~actions involving violation of a county ordinance,~~ or by any city
10 attorney of a city, or city and county, having a population in
11 excess of 750,000, and, with the consent of the district attorney,
12 by a city prosecutor in any city having a full-time city prosecutor
13 or, with the consent of the district attorney, by a city attorney in
14 any city and county in the name of the people of the State of
15 California upon their own complaint or upon the complaint of
16 any board, officer, person, corporation or association or by any
17 person who has suffered injury in fact and has lost money or
18 property as a result of such unfair competition.

19 *SEC. 2. Section 17206 of the Business and Professions Code*
20 *is amended to read:*

21 17206. Civil Penalty for Violation of Chapter

22 (a) Any person who engages, has engaged, or proposes to
23 engage in unfair competition shall be liable for a civil penalty not
24 to exceed two thousand five hundred dollars (\$2,500) for each
25 violation, which shall be assessed and recovered in a civil action
26 brought in the name of the people of the State of California by
27 the Attorney General, by any district attorney, by any county
28 ~~counsel authorized by agreement with the district attorney in~~
29 ~~actions involving violation of a county ordinance,~~ by any city
30 attorney of a city, or city and county, having a population in

1 excess of 750,000, with the consent of the district attorney, by a
2 city prosecutor in any city having a full-time city prosecutor, or,
3 with the consent of the district attorney, by a city attorney in any
4 city and county, in any court of competent jurisdiction.

5 (b) The court shall impose a civil penalty for each violation of
6 this chapter. In assessing the amount of the civil penalty, the
7 court shall consider any one or more of the relevant
8 circumstances presented by any of the parties to the case,
9 including, but not limited to, the following: the nature and
10 seriousness of the misconduct, the number of violations, the
11 persistence of the misconduct, the length of time over which the
12 misconduct occurred, the willfulness of the defendant's
13 misconduct, and the defendant's assets, liabilities, and net worth.

14 (c) If the action is brought by the Attorney General, one-half
15 of the penalty collected shall be paid to the treasurer of the
16 county in which the judgment was entered, and one-half to the
17 General Fund. If the action is brought by a district attorney or
18 county counsel, the penalty collected shall be paid to the
19 treasurer of the county in which the judgment was entered.
20 Except as provided in subdivision (e), if the action is brought by
21 a city attorney or city prosecutor, one-half of the penalty
22 collected shall be paid to the treasurer of the city in which the
23 judgment was entered, and one-half to the treasurer of the county
24 in which the judgment was entered. The aforementioned funds
25 shall be for the exclusive use by the Attorney General, the district
26 attorney, the county counsel, and the city attorney for the
27 enforcement of consumer protection laws.

28 (d) The Unfair Competition Law Fund is hereby created as a
29 special account within the General Fund in the State Treasury.
30 The portion of penalties that is payable to the General Fund or to
31 the Treasurer recovered by the Attorney General from an action
32 or settlement of a claim made by the Attorney General pursuant
33 to this chapter or Chapter 1 (commencing with Section 17500) of
34 Part 3 shall be deposited into this fund. Moneys in this fund,
35 upon appropriation by the Legislature, shall be used by the
36 Attorney General to support investigations and prosecutions of
37 California's consumer protection laws, including implementation
38 of judgments obtained from such prosecutions or investigations
39 and other activities which are in furtherance of this chapter or
40 Chapter 1 (commencing with Section 17500) of Part 3.

1 (e) If the action is brought at the request of a board within the
2 Department of Consumer Affairs or a local consumer affairs
3 agency, the court shall determine the reasonable expenses
4 incurred by the board or local agency in the investigation and
5 prosecution of the action.

6 Before any penalty collected is paid out pursuant to subdivision
7 (c), the amount of any reasonable expenses incurred by the board
8 shall be paid to the Treasurer for deposit in the special fund of
9 the board described in Section 205. If the board has no such
10 special fund, the moneys shall be paid to the Treasurer. The
11 amount of any reasonable expenses incurred by a local consumer
12 affairs agency shall be paid to the general fund of the
13 municipality or county that funds the local agency.

14 (f) If the action is brought by a city attorney of a city and
15 county, the entire amount of the penalty collected shall be paid to
16 the treasurer of the city and county in which the judgment was
17 entered for the exclusive use by the city attorney for the
18 enforcement of consumer protection laws. However, if the action
19 is brought by a city attorney of a city and county for the purposes
20 of civil enforcement pursuant to Section 17980 of the Health and
21 Safety Code or Article 3 (commencing with Section 11570) of
22 Chapter 10 of Division 10 of the Health and Safety Code, either
23 the penalty collected shall be paid entirely to the treasurer of the
24 city and county in which the judgment was entered or, upon the
25 request of the city attorney, the court may order that up to
26 one-half of the penalty, under court supervision and approval, be
27 paid for the purpose of restoring, maintaining, or enhancing the
28 premises that were the subject of the action, and that the balance
29 of the penalty be paid to the treasurer of the city and county.

30 *SEC. 3. Section 17207 of the Business and Professions Code*
31 *is amended to read:*

32 17207. (a) Any person who intentionally violates any
33 injunction prohibiting unfair competition issued pursuant to
34 Section 17203 shall be liable for a civil penalty not to exceed six
35 thousand dollars (\$6,000) for each violation. Where the conduct
36 constituting a violation is of a continuing nature, each day of that
37 conduct is a separate and distinct violation. In determining the
38 amount of the civil penalty, the court shall consider all relevant
39 circumstances, including, but not limited to, the extent of the
40 harm caused by the conduct constituting a violation, the nature

1 and persistence of that conduct, the length of time over which the
2 conduct occurred, the assets, liabilities, and net worth of the
3 person, whether corporate or individual, and any corrective
4 action taken by the defendant.

5 (b) The civil penalty prescribed by this section shall be
6 assessed and recovered in a civil action brought in any county in
7 which the violation occurs or where the injunction was issued in
8 the name of the people of the State of California by the Attorney
9 General or by any district attorney, any county counsel
10 ~~authorized by agreement with the district attorney in actions~~
11 ~~involving violation of a county ordinance~~, or any city attorney in
12 any court of competent jurisdiction within his or her jurisdiction
13 without regard to the county from which the original injunction
14 was issued. An action brought pursuant to this section to recover
15 civil penalties shall take precedence over all civil matters on the
16 calendar of the court except those matters to which equal
17 precedence on the calendar is granted by law.

18 (c) If such an action is brought by the Attorney General,
19 one-half of the penalty collected pursuant to this section shall be
20 paid to the treasurer of the county in which the judgment was
21 entered, and one-half to the State Treasurer. If brought by a
22 district attorney or county counsel the entire amount of the
23 penalty collected shall be paid to the treasurer of the county in
24 which the judgment is entered. If brought by a city attorney or
25 city prosecutor, one-half of the penalty shall be paid to the
26 treasurer of the county in which the judgment was entered and
27 one-half to the city, except that if the action was brought by a
28 city attorney of a city and county the entire amount of the penalty
29 collected shall be paid to the treasurer of the city and county in
30 which the judgment is entered.

31 (d) If the action is brought at the request of a board within the
32 Department of Consumer Affairs or a local consumer affairs
33 agency, the court shall determine the reasonable expenses
34 incurred by the board or local agency in the investigation and
35 prosecution of the action.

36 Before any penalty collected is paid out pursuant to subdivision
37 (c), the amount of the reasonable expenses incurred by the board
38 shall be paid to the State Treasurer for deposit in the special fund
39 of the board described in Section 205. If the board has no such
40 special fund, the moneys shall be paid to the State Treasurer. The

1 amount of the reasonable expenses incurred by a local consumer
2 affairs agency shall be paid to the general fund of the
3 municipality or county which funds the local agency.

4 ~~SECTION 1. Section 76000.6 is added to the Government~~
5 ~~Code, to read:~~

6 ~~76000.6. (a) In addition to the penalties set forth in Section~~
7 ~~76000, the county board of supervisors, in a county that has~~
8 ~~established a local Crime Stoppers Program, may elect to levy an~~
9 ~~additional penalty not to exceed two dollars (\$2) which shall be~~
10 ~~collected together with and in the same manner as the amounts~~
11 ~~established in Section 1464 of the Penal Code, upon every fine,~~
12 ~~penalty, or forfeiture imposed and collected by the courts for~~
13 ~~criminal offenses punishable by a fine, imprisonment in a county~~
14 ~~jail, or by both fine and imprisonment in a county jail which shall~~
15 ~~be used to fund that county's local Crime Stoppers Program.~~

16 ~~(b) Money collected pursuant to subdivision (a) shall be taken~~
17 ~~from fines and forfeitures deposited with the county treasurer~~
18 ~~prior to any division pursuant to Section 1463 of the Penal Code.~~